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American Academy of Family



4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? YES NO
If yes, identify entity and nature of interest:
5. Is party a trade association? (amici curiae do not complete this question) YES NO
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IDENTITY AND INTEREST OF *AMICI CURIAE*¹

Amici, the American Academy of Family Physicians, the American Academy of Pediatrics, the American College of Nurse-Midwives, the American College of Obstetricians and Gynecologists (“ACOG”), the American College of Physicians, the American Medical Association (the “AMA”), the American Psychiatric Association, Nurse Practitioners in Women’s Health, the Society for Maternal-

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SUMMARY OF ARGUMENT

South Carolina's attempt to exclude Planned Parenthood South Atlantic ("PPSAT") from its Medicaid program for reasons wholly unrelated to patient care and well-being would be detrimental to public health. PPSAT is professionally competent to administer the extensive m

services, particularly those in health care deserts. Planned Parenthood helps to fill this void by playing an outsized role in providing such care.

The State has been clear that it does not seek to terminate PPSAT from Medicaid because of the quality of its services but instead, because, outside of Medicaid, Planned Parenthood provides lawful, constitutionally protected abortion services. Notably, state law already prohibits the use of Medicaid funds for abortion care, except under extremely limited circumstances. In prioritizing its political agenda, the State creates a barrier to crucial health care services.

If successful, terminating PPSAT as a Medicaid provider would have a devastating impact on people in South Carolina. Decreased access to contraception methods and counseling, cancer and disease screenings, and other critical reproductive health services will likely result in more unintended pregnancies, undetected cancers and diseases, and poor enings,9M00meds for aon

reproductive health care. South Carolinians should not be subjected to similar consequences.

This Court has already found that the State cannot deny Medicaid beneficiaries the right to choose their own qualified provider and thereby prevent access to the high-quality health care provided by PPSAT. The same logic supports affirmance of the District Court's order permanently enjoining the State from removing PPSAT from South Carolina's Medicaid program.

ARGUMENT

I. MEDICAID AND PLANNED PARENTHOOD ARE INTEGRAL TO PROVIDING HEALTH CARE IN SOUTH CAROLINA

A. Medicaid Plays a Critical Role in Providing Essential Health Care To Individuals in South Carolina

Medicaid is the largest public health insurance program in the United States and continues to grow. *See* Peggah Khorrami & Benjamin D. Sommers, *Changes in U.S. Medicaid Enrollment During the COVID-19 Pandemic*, JAMA Network Open (May 5, 2021), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2779458>. The program covers Americans from low-income families to qualified children, adolescents, pregnant women, and individuals receiving Supplemental Security Income. *See* Medicaid, *List of Medicaid Eligibility Groups, Mandatory Categorically Needy*, <https://www.medicaid.gov/sites/default/files/2019-12/list-of->

eligibility-groups.pdf (last visited June 2, 2021). In 2015, for example, Medicaid covered 48% of reproductive-age women with incomes below the federal poverty line, a disproportionate number of whom were women of color. Adam Sonfield, *Why Protecting Medicaid Means Protecting Sexual and Reproductive Health*, 20 *Guttmacher Pol'y Rev.* 39 (Mar. 9, 2017), <https://www.guttmacher.org/gpr/2017/03/why-protecting-medicaid-means-protecting-sexual-and-reproductive-health>.

Under Medicaid, individuals can select from among qualified providers, who Medicaid generally reimburses. Medicaid accounts for 75% of all public family planning expenditures, and the federal government matches 90% of state family planning expenditures through the program, a higher rate than for other services. Kaiser Family Found., *Medicaid's Role for Women*, at 4 (Mar. 28, 2019), <https://www.kff.org/medicaid/fact-sheet/medicaids-role-for-women>.

Medicaid is crucial in South Carolina. South Carolinians are particularly in need of Medicaid insurance, as the poverty rate in the state is higher than the national average and Medicaid covers one in five South Carolinians. *See* Kaiser Family Found., *State Health Care Snapshots: South Carolina* (Oct. 15, 2020), <https://www.kff.org/statedata/election-state-fact-sheets/south-carolina/>; Kaiser Family Found., *Medicaid in South Carolina* (Oct. 2019), <http://files.kff.org/attachment/fact-sheet-medicaid-state-SC>. Moreover, nearly one

in five South Carolina adults report poor or fair health status. *State Health Care Snapshots: South Carolina, supra* page 6, at 8 For example, South Carolinians have higher rates of key health problems, including obesity, diabetes, and cardiovascular diseases, as compared to the national population. *Id.* at 10. In addition, the state's infant mortality rates are higher than the national average. *Id.*

B. Planned Parenthood Provides Crucial Family Planning and Reproductive Health Care Services

1. Planned Parenthood Is a National Leader in Providing Care for Low-Income Individuals

Planned Parenthood is one of several providers that uses Medicaid and other federal funding to subsidize critical health care services to low-income individuals. In 2015, Planned Parenthood affiliates across the country cared for approximately 1,500,000 patients receiving some form of federal funding assistance. *See* Planned

Needs, 22-6 Women's Health Issues e519, e519, e522 (2012); Jennifer J. Frost, *U.S. Women's Use of Sexual and Reproductive Health Services: Trends, Sources of Care and Factors Associated with Use, 1995-2010*, at 43 (Guttmacher Inst. May 2013), <http://www.guttmacher.org/pubs/sources-of-care-2013.pdf>.

Planned Parenthood provides more timely, convenient, accessible, and comprehensive services to its patients than other clinics. Its clinics are significantly more likely to offer same-day appointments and to have shorter wait times for first visits. Jennifer J. Frost et al., *Variation in Service Delivery Practices Among Clinics Providing Publicly Funded Family Planning Services in 2010*, at 19 (Guttmacher Inst. May 2012), https://www.guttmacher.org/sites/default/files/report_pdf/clinic-survey-2010.pdf; *see also* Mia R. Zolna & Jennifer J. Frost, *Publicly Funded Family Planning Clinics in 2015: Patterns and Trends in Service Delivery Practices and Protocols*, at 9 (Guttmacher Inst. Nov. 2016), https://www.guttmacher.org/sites/default/files/report_pdf/publicly_funded_family_planning_clinic_survey_2015. Individuals seeking an appointment at a Planned Parenthood clinic can expect to wait an average of 1.8 days, significantly shorter than the average wait times at other clinics: 6.8 days at a public health department, 5.3 days at a Federally Qualified Health Center ("FQHC"), and 5.4 days at other types of publicly funded clinics. *See* Frost, *Variation in Service Delivery Practices*, *supra* page 8, at 36. Planned Parenthood clinics are also the most likely

to offer extended clinic hours. *See id.* at 19. Additionally, relative to FQHCs, Planned Parenthood clinics are more likely to have staff trained to address the special needs of certain groups of clients, including adolescents (91% of Planned Parenthood clinics to 72% of FQHCs); lesbian or gay individuals (83% to 46%); individuals experiencing intimate partner violence (81% to 68%); non-English-speaking individuals (82% to 65%); and men (77% to 59%). *See id.* at 22, 38 & Table 9.

Planned Parenthood clinics provide a wide variety of family planning and reproductive health care services, including contraceptive care and services, cancer screening, general health care screening, STI testing and treatment, pregnancy support, and patient education. Planned Parenthood, *Our Services*, <https://www.plannedparenthood.org/get-care/our-services> (last visited June 2, 2021). It also offers a range of telehealth services and online resources to accommodate its patients' needs during the COVID-19 pandemic. *Id.* Indeed, between October 1, 2015 and September 30, 2016, Planned Parenthood health centers provided approximately 4.4 million tests or treatment for STIs, including more than 706,000 HIV tests and 617,000 cervical and breast cancer screenings, and over 1 million pregnancy tests. Planned Parenthood, *2016-2017 Annual Report* 7, 31 (2018),

https://www.plannedparenthood.org/uploads/filer_public/71/53/7153464c-8f5d-4a26-bead-2a0dfe2b32ec/20171229_ar16-17_p01_lowres.pdf.

2. *Planned Parenthood Provides Needed and Specialized Care*

Planned Parenthood has an outsized role as a specialized provider of contraceptive services. Frost, *Specialized Family Planning Clinics*, *supra* page 7, at e519. Though Planned Parenthood clinics account for only 10% of all publicly funded family planning clinics, they serve over one third of all clinic patients. Zolna & Frost, *supra* page 8, at 4. Additionally, although 5,829 FQHCs provided family planning services in 2015, each site served, on average, only 320 female contraceptive patients annually. Kinsey Hasstedt, *FQHCs: Vital Sources of Care, No Substitute for the Family Planning Safety Net*, 20 *Guttmacher Pol’y Rev.* 67, 68 (2017), https://www.guttmacher.org/sites/default/files/article_files/gpr2006717_0.pdf. By contrast, each of the 676 Planned Parenthood clinics served, on average, 2,950 female contraceptive patients annually, almost ten times more than FQHCs. *See id.*

Planned Parenthood clinics also provide a wider variety of birth control methods compared to other family-planning clinics. *See* Frost, *Variation in Service Delivery Practices*, *supra* page 8, at 10, 27; Kinsey Hasstedt, *Understanding Planned Parenthood’s Critical Role in the Nation’s Family Planning Safety Net*, 20 *Guttmacher Pol’y Rev.* 13, 13 (2017),

https://www.guttmacher.org/sites/default/files/article_files/gpr2001216.pdf. Planned Parenthood clinics are more likely to dispense oral contraceptives and provide refills on-site. *See* Frost, *Variation in Service Delivery Practices*, *supra* page 8, at 34. Planned Parenthood is also significantly more likely than all other clinics to provide a long-acting reversible contraceptive (“LARC”) method to its patients, with nearly all centers offering same-day insertion. Zolna & Frost, *supra* page 8, at 12; Hasstedt, *Understanding Planned Parenthood’s Critical Role*, *supra* page 10, at 13. LARCs, which include intrauterine devices and contraceptive implants, are widely viewed as the most medically effective and cost-effective forms of contraception. *See, e.g.,* Brooke Winner et al., *Effectiveness of Long-Acting Reversible Contraception*, 366 *New Eng. J. Med.* 1998, 2004 (2012); ACOG, Committee on Gynecologic Practice Long Acting Reversible Contraception Working Group, *Increasing Access to Contraceptive Implants and Intrauterine Devices To Reduce Unintended Pregnancy*, Committee Opinion No. 642, at 2 (2015, re-aff’d 2018), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2015/10/increasing-access-to-contraceptive-implants-and-intrauterine-devices-to-reduce-unintended-pregnancy>; American Academy of Pediatrics, *Policy Statement: Contraception for Adolescents*, e1251 (2014), <http://pediatrics.aappublications.org/content/pediatrics/134/4/e1244.full.pdf>

reported challenges to ensuring enough Medicaid providers to serve patients. *See U.S. Gov'*

28% (or 2.4 million) received care from private clinicians, such as private doctors' offices. Jennifer J. Frost et al., *Publicly Funded Contraceptive Services at U.S. Clinics, 2015*, at 39 (Guttmacher Inst. Apr. 2017), https://www.guttmacher.org/sites/default/files/report_pdf/publicly_funded_contraceptive_services_2015_3.pdf.

Each year, PPSAT provides nearly 4,000 people in South Carolina with breast and cervical cancer screening.

and may present a variety of social and economic challenges. *See id.* Publicly funded family planning centers like PPSAT in South Carolina helped avert 23,000 unintended pregnancies, 11,400 unplanned births, and 7,800 abortions in 2013. *See id.* Additionally, STI and cancer screenings provided by Planned Parenthood clinics often result in early detection and treatment and help prevent transmission to partners. *See id.*

Despite PPSAT's efforts, South Carolina is still underserved. In 2014, approximately 323,000 women in South Carolina were identified as in need of publicly funded contraceptive services and supplies, yet only about 100,000 women actually received these services. Jennifer J. Frost et al., *Contraceptive Needs and Services, 2014 Update*, at 24–28 (Guttmacher Inst., Sept. 2016), https://www.guttmacher.org/sites/default/files/report_pdf/contraceptive-needs-and-services-2014_1.pdf. The COVID-19 pandemic has only exacerbated this issue: one in three women reported in a June 2020 survey that they had to “delay or cancel visiting a health care

and Expanding Medicaid to Improve Women's Health, Committee Opinion No. 826, *supra* page 16, at e166.

As this Court recognized, “South Carolina does not contest the fact that [PPSAT] is professionally qualified to deliver . . . services.” *Planned Parenthood S. Atl. v. Baker*, 941 F.3d 687, 702 (4th Cir. 2019), *cert. denied*, 141 S. Ct. 550 (2020). Nor has the State provided any medical reason to exclude PPSAT from providing care. Instead, excluding PPSAT from the State’s Medicaid program is based on Governor Henry McMaster’s desire to eliminate providers that offer abortion care *outside* of the Medicaid program. The Court should again reject this open attempt to politically interfere with the provision of medical care.

III. EXCLUDING PLANNED PARENTHOOD FROM MEDICAID IN SOUTH CAROLINA WOULD BE DETRIMENTAL TO THE PUBLIC HEALTH

South Carolina’s attempt to exclude PPSAT from the State’s Medicaid program would be detrimental to the public health, depriving an already underserved population of critical care and disproportionately impacting women. As discussed more fully below, the data are clear that other providers cannot fill the void left if PPSAT is excluded from the provider network. The end-result of this exclusion will be to disrupt individuals in seeking medical care that, in many circumstances, is serious and lifesaving. Restrictions on access to contraception methods and counseling, cancer and disease screenings, and other critical

reproductive health services that Planned Parenthood offers Medicaid recipients will likely result in more unintended pregnancies, undetected cancers and diseases, and poor health outcomes for an already vulnerable population.

A. Other Health Care Providers Cannot Compensate for the Loss of Planned Parenthood

Other South Carolina health centers cannot fill the void in family planning care if PPSAT loses its status as a qualified Medicaid provider. As previously noted, more than two-thirds of states already report challenges in ensuring enough Medicaid providers to serve beneficiaries. GAO-13-55, *supra* page 13, at 18. For example, as of 2015, in 238 of the 415 counties in which Planned Parenthood clinics operated, Planned Parenthood provided care for at least half of the women who depended on publicly funded family planning services from health care safety-net providers, which deliver contraceptive care at reduced or no cost through federal, state, and local funding. Hasstedt, *Understanding Planned Parenthood's Critical Role*, *supra* page 10, at 13; *see also* Hasstedt, *FQHCs: Vital Sources of Care*, *supra* page 10, at 67.

Without Planned Parenthood, there would be even fewer Medicaid providers, and FQHCs would have to account for the difference. This presents many challenges.

communities with few other health care providers. *See* 42 C.F.R. § 491.5 (2021).

As a result, communities losing access to Planned Parenthood may not have an FQHC nearby.

Worse, in South Carolina, 30% of the population live in areas in which there is a shortage of primary care, and the two PPSAT clinics in South Carolina are located in areas designated underserved by the U.S. Health Resources and Services Administration. Robin Rudowitz et al., *Factors Affecting States' Ability to Respond to Federal Medicaid Cuts and Caps: Which States Are Most At Risk?*, Kaiser Family Found., at 22 (Jun96kSTm (e)Tj 1 0 0 1 284.926 546.Found., at 22 (J284.926 5

Excluding PPSAT would remove these unique features that all

who rely on Medicaid for care. Eliminating access to these services will result in unintended pregnancies.

The human cost of unintended pregnancy is high: women must either carry an unplanned pregnancy to term and keep the baby, put the child up for adoption, or terminate their pregnancy. Women and their families may struggle with this challenge for medical, ethical, social, legal, and financial reasons. Historically, data has shown a correlation between unintended live births and disproportionately high rates of maternal and infant health problems, low maternal educational attainment, and decreased financial and emotional resources to support existing children. *See* Barry Zuckerman et al., *Preventing Unintended Pregnancy: A Pediatric Opportunity*, 133 *Pediatrics* 181, 181 (2014); *see also* *The Best Intentions: Unintended Pregnancy and the Well-Being of Children and Families* 50–90 (Sarah S. Brown & Leon Eisenberg, eds. National Academy Press 1995).

Reducing PPSAT's services in South Carolina will have other health consequences beyond unintended pregnancies. Contraception protects those for whom pregnancy can be hazardous or life-threatening, in addition to having scientifically recognized uses and health benefits, including treating menstrual pain, endometriosis, and acne and decreasing the risk of endometrial and ovarian cancer. *See, e.g.*, Megan L. Kavanaugh & Ragnar M. Anderson, *Contraception and Beyond: The Health Benefits of Services Provided at Family Planning*

Centers, at 7, 11–13 (Guttmacher Inst. July 2013),

<https://www.guttmacher.org/report/contraception-and-beyond-health-benefits-services-provided-family-planning-centers>.

C. Other States' Exclusion of Planned Parenthood Demonstrates the Harms Women in South Carolina May Face Absent the Injunction

The above-discussed harms are not merely academic speculation or conjecture. Other states such as Texas and Indiana have defunded Planned Parenthood, resulting in negative health outcomes.

Texas has repeatedly sought to defund Planned Parenthood over the last decade. First, a 2011 change in Texas's funding scheme led to eighty-two family-planning clinics in Texas closing, while nearly half of the facilities that remained open and received state funding were forced to make staff cuts. Ctr. for Reprod. Rights & Nat'l Latina Inst. for Reprod. Health, *Nuestra Voz, Nuestra Salud, Nuestro Texas: The Fight for Women's Reproductive Health in the Rio Grande Valley*, at 18 (Nov. 2013), <http://www.nuestrotexas.org/pdf/NT-spread.pdf>. Second, effective January 1, 2013, Texas shifted to a fully state-run family planning 837.261Tamat reme144 .a44 d

(Mar. 2017), https://hhs.texas.gov/file/57506/download?token=_Ygiwf-0

(reporting a 32% decrease in claims for contraceptive injections, 47% decrease for oral contraceptives, and 59% decrease for condoms between 2011 and 2015).

More than half of Texas women surveyed in a 2014 Texas Policy Evaluation

Project study faced at least o

to combat a major public health problem in the United States—unintended pregnancy—by reducing barriers to LARC methods. ACOG, *Increasing Access to Contraceptive Implants and Intrauterine Devices to Reduce Unintended Pregnancy*, *supra* page 11, at 1.

Scott County, Indiana offers an analogous cautionary tale in the HIV context. The county had an unprecedented outbreak of HIV infections after the county's sole Planned Parenthood clinic shut down in 2013, following years of

into the reality South Carolinians may face if the State is permitted to unduly interfere with access to necessary and quality health care.

CONCLUSION

For the foregoing reasons, *amici curiae* ask the Court to affirm the District

*American Psychiatric Association,
Nurse Practitioners in Women's
Health, Society for Maternal-Fetal
Medicine, Society of Gynecologic
Oncology, and Society of OB/GYN
Hospitalists*

CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(A)

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) and Fed. R. App. P. 29(a) because it contains 5263 words, excluding

*American College of Physicians,
American Medical Association,
American Psychiatric Association,*

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2021, I caused the foregoing Brief of *Amici Curiae* American Academy of Family Physicians, American Academy of Pediatrics, American College of Nurse-Midwives, American College of Obstetricians and Gynecologists, American College of Physicians, American Medical Association, American Psychiatric Association, Nurse Practitioners for Women's Health, Society for Maternal-Fetal Medicine, Society of Gynecologic Oncology, and the Society of OB/GYN Hospitalists In Support of Plaintiff/Appellees For Affirmance to be electronically filed with the Clerk of the Court for the Fourth Circuit using the CM/ECF system, which will automatically serve electronic copies upon all counsel of record.

Dated: June 4, 2021

/s/ Janice M. Mac Avoy

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